

EDMUND G. BROWN JR., Attorney General
of the State of California
JOSE R. GUERRERO, State Bar No. 97276
Supervising Deputy Attorney General
CATHERINE E. SANTILLAN
Senior Legal Analyst
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5579
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation
Against:

MARK ALLEN LIVENGOOD
3935 N. Ricewood
Fresno CA 93705

RCP License 23657

Respondent.

Case No. D1 2005 723

**DEFAULT DECISION
AND ORDER**

[Gov. Code §11520]

FINDINGS OF FACT

1. On or about November 17, 2008, Complainant Stephanie Nunez, in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs, filed Petition to Revoke Probation No. D1 2005 723 against Mark Allen Livengood (Respondent) before the Respiratory Care Board.

2. On or about June 23, 2004, the Respiratory Care Board (Board) issued RCP License No. 23657 to Respondent. The RCP License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2009, unless renewed.

3. On or about November 17, 2008, Andrea Pina, an employee of the Complainant Agency, served by Certified and First Class Mail a copy of the Petition to Revoke Probation (Petition), Case No. D1 2005 723, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to

1 Respondent's address of record with the Board, which was and is 3935 N. Ricewood, Fresno, CA
2 93705. A copy of the Petition, the related documents, and Declaration of Service are attached as
3 exhibit A, and are incorporated herein by reference.

4 4. Service of the Petition was effective as a matter of law under the
5 provisions of Government Code section 11505, subdivision (c).

6 5. Government Code section 11506 states, in pertinent part:

7 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
8 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
9 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
10 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

11 6. Respondent failed to file a Notice of Defense within 15 days after service
12 upon him of the Petition, and therefore waived his right to a hearing on the merits of Petition in
13 Case No. D1 2005 723.

14 7. California Government Code section 11520 states, in pertinent part:

15 "(a) If the respondent either fails to file a notice of defense or to appear at the
16 hearing, the agency may take action based upon the respondent's express admissions or
17 upon other evidence and affidavits may be used as evidence without any notice to
18 respondent.

19 8. Pursuant to its authority under Government Code section 11520, the Board
20 finds Respondent is in default. The Board will take action without further hearing and, based on
21 Respondent's express admissions by way of default and the evidence before it, contained in
22 exhibits A, B and C, finds that the allegations in the Petition are true.

23 9. The Respiratory Care Board further finds that pursuant to Business and
24 Professions Code section 3753.5, the costs of investigation and enforcement of the case prayed
25 for in the Petition total \$ 732.25, based on the Certification of Costs contained in Exhibit C.

26 ///

27 ///

28 ///

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Mark Allen
3 Livengood has subjected his RCP License No. 23657 to discipline.

4 2. A copy of the Petition and the related documents and Declaration of
5 Service are attached.

6 3. The agency has jurisdiction to adjudicate this case by default.

7 4. The Respiratory Care Board is authorized to revoke Respondent's
8 Respiratory Care Practitioner License based upon the following violations alleged in the Petition:
9 violation of Probation Condition 2 (participate in random testing) in that he failed to appear for
10 random testing; Probation Condition 5 (file quarterly reports) in that he failed to submit reports
11 for three reporting periods; Probation Condition 6 (comply with the probation monitoring
12 program) in that he failed to telephone the Board's random testing program on various dates;
13 Probation Condition 7 (pay probation monitoring costs) in that he failed to pay monthly
14 probation costs since May 2008; Probation Condition 10 (notify the Board of change of
15 employment) in that he failed to inform the Board in writing that he resigned from employment.

16 5. Respondent is hereby ordered to pay the above costs of investigation and
17 enforcement of this action.

18 ORDER

19 IT IS SO ORDERED that RCP License No. 23657, heretofore issued to
20 Respondent Mark Allen Livengood, is revoked.

21 Respondent is ordered to reimburse the Respiratory Care Board the amount of
22 \$732.25 for its investigative and enforcement costs. The filing of bankruptcy by Respondent
23 shall not relieve Respondent of his responsibility to reimburse the Board for its costs.
24 Respondent's RCP License may not be renewed or reinstated unless all costs ordered under
25 Business and Professions Code section 3753.5 have been paid.

26 ///

27 ///

28 ///

1 Pursuant to Government Code section 11520, subdivision (c), Respondent may
2 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
3 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
4 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
5 statute.

6 This Decision shall become effective on March 5, 2009.

7 It is so ORDERED February 3, 2009

8
9
10 Original signed by:
11 LARRY L. RENNER, BS, RRT, RCP, RPFT
12 PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

13 livengood_m_default.wpd
14 DOJ Matter ID: SF2008201009

15 Attachments:

16 Exhibit A: Petition to Revoke Probation, Case No. D1 2005 723, Related Documents, and
17 Declaration of Service
18 Exhibit B: Declaration of Probation Monitor Victor Craig Martinez
19 Exhibit C: Certification of Costs: Declaration of Catherine Santillan
20
21
22
23
24
25
26
27
28